

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL MISCELLANEOUS APPEAL No.1066 of 2016

JUDGMENT:

This Civil Miscellaneous Appeal, under Section 23 of the Railway Claims Tribunal Act, 1987, is filed by the appellants-applicants, challenging the order, dated 29.09.2016 in O.A. (II-U) No.16 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad ('the Tribunal', for brevity), whereby the claim petition filed by the appellants-applicants claiming compensation for the death of one B.Vijaya Babu @ Vijaya (hereinafter referred to, as 'the deceased') in an untoward incident of accidental fall from train no.7050 Secunderabad-Machilipatnam Express (hereinafter referred to, as 'the subject train') on 08.09.2006 at KM 9/8 Nujella and Gudlavalleru railway stations while travelling from Gudivada to Gudlavalleru, was dismissed.

2. Heard both sides. Perused the record.

3. While adjudicating the case, the Tribunal held as follows: (paragraph no.6)

"I have heard both sides at length, perused the pleadings and given my thoughtful consideration to all aspects of the case. Two basic facts which are required to be addressed are that no journey ticket was produced by the applicants and secondly, in the inquest report drawn, which was a document

prepared vide para 15 thereof it was observed that the deceased was a patient suffering from weakness. Due to ill health he used to have “fits”. The story, as projected by the applicants that he was travelling by train 7050 Secunderabad-Machilipatnam Express and accidentally fell down from said train is totally unbelievable and it is the driver of the said train, who after passing NUJ station observed that one male person lying in the middle of the track of the track at km 9/10-8 and applied sudden brake and train came to halt. Injured (now deceased) was loaded in the said train and brought to Gudlavarellu station and handed over to 108 Ambulance. Said train was going towards Machilipatnam and not from GVL to GDV.”

4. It is contended that there is dying declaration of the deceased, etc. to substantiate the accidental fall of the deceased from the subject train on 08.09.2006 at KM 9/8 Nujella and Gudlavalleru railway stations. In this case, driver of the subject train is an important witness to speak with regard to the place of finding of the injured and to establish the manner of suffering injuries by him. His evidence is necessary to find out whether there was any untoward incident as defined under Section 123 (c) of the Railways Act, 1989. Therefore, the impugned order 29.09.2016 in O.A. (II-U) No.16 of 2008 on the file of the Railway Claims Tribunal, Secunderabad Bench at Secunderabad is set aside. The Tribunal is directed to summon and examine the driver of the subject train who was on duty on 08.09.2006 and provide an opportunity to

both sides to adduce further evidence, if any, and answer the issues afresh. The Tribunal shall complete entire exercise as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this judgment.

5. The appeal is allowed accordingly remanding the matter.

There shall be no order as to costs of this appeal. Pending Miscellaneous Petitions, if any, in the appeal shall stand closed.

14.12.2018
DRK

Dr. SHAMEEM AKTHER, J



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